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## THE LATE LORD CHIEF JUSTICE OF ENGLAND.

### SOME REMINISCENCES.

BY THE PRESENT LORD CHIEF JUSTICE, THE RIGHT HON. LORD  
RUSSELL OF KILLOWEN.

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IN these lines I propose to speak of Lord Coleridge as I knew him at the Bar, on the Bench, and in Society. It is not my purpose to speak of his early life nor of his career at Eton and at Balliol, where he laid the foundation of that wide scholarship which in these dull, prosaic, practical days is gradually becoming rarer in those who achieve great positions either on the Bench or in political life.

He was called to the Bar in 1847, and began his career with many favorable attending circumstances. His father, still on the Bench, was a respected if not a great Judge, and Mr. Coleridge brought with him to the Temple the reputation of ripe scholarship, and, from the Union at Oxford, the promise of remarkable gifts of speech. To these he added a distinguished presence and a voice the beauty of which I have not often known surpassed. Indeed, if I except the voices of perhaps Sir Alexander Cockburn, Mr. Gladstone, the present Sir Robert Peel, and the late Father Burke of the Dominican Order, I shall have exhausted the list of those who may be said to have been his

superiors in this respect. At the Bar, his rise was rapid ; but, until the later years of his professional life, and, indeed, until after he had served as a Law Officer, I have reason to think that his income did not approach that of many men in general practice at the Bar in recent times.

His Circuit (the Western) did not introduce him in any considerable degree to the heavy commercial work which abounded in those days at the Guildhall and on the Northern Circuit ; but after he had obtained his silk gown in 1861, there were few of those cases known nowadays as "*causes célèbres*" in which his services were not eagerly sought after. It was my own good fortune to have been concerned (playing very minor parts) soon after I was called to the Bar, in three causes which brought him great renown. The first of these was the Windham Lunacy Case, in which Sir Hugh Cairns and Mr. John Karslake appeared for Windham; Mr. Coleridge for the lady whom Windham had married; and Mr. Montagu Chambers and Mr. Field, now Lord Field, for General Windham, the petitioner. I held a watching brief for Lady Guiblie, the mother of Mr. Windham. If Sir Hugh Cairns's speech was the greatest and Mr. Montagu Chambers's the most vigorous, Mr. Coleridge's was certainly the most graceful and eloquent delivered on that occasion. His peroration ran thus :

"It is neither my duty nor my inclination to say a single word in favor of profligacy or of vice. 'Stolen waters are sweet and bread eaten in secret is pleasant. But he knoweth not that the dead are there, and that her guests are in the depths of hell.' Far be it from me to cast a shadow of doubt upon the truth of those sublime and tremendous words, but nothing can be more absurd, and even cruel, than to take a sanctimonious view of Mr. and Mrs. Windham's life, to confound sin and vice with insanity, and to accept immorality and irreligion as proofs of legal incapacity. If religion is to be invoked by the other side, I have no hesitation in saying that I would far rather be the Magdalene who washed her Divine Master's feet with her tears and wiped them with the hairs of her head than the self-complacent Pharisee who condemned the woman because she was a sinner, and who tried to plume himself before Almighty God upon the outer regularity of his decorous life. Under any other circumstances, I would ask your verdict for Mr. Windham with the utmost confidence and with absolute certainty of success; and even in this case, in spite of the mountain of prejudice which has been excited, I appeal to you, with all the earnestness and energy which I can command, and in the name of law, honor, and justice, to acquit Mr. Windham and his wife of the filthy and infamous charges which have been so cruelly, so ruthlessly, and so basely pressed against them."

In *Fitzgerald* against *Northcote*, an action brought by a son of the late Lord Fitzgerald against the Reverend Dr. Northcote, President of Oscott College, for expulsion from the school, Mr. Coleridge represented the plaintiff, while his great rival at the Bar, Mr. Karslake, represented the defendant. Mr. Coleridge delivered in that trial most masterly speeches both in opening and in reply, eventually winning the verdict for his client. As some of the persons concerned in that case are still living, it is proper to say that the grounds on which it was sought to justify the expulsion involved no moral imputation upon the pupil expelled; at the most, he was accused of breaches of discipline, and of having taken part in the formation of a kind of secret society amongst the students, which in the opinion of the authorities of the college was likely to prove subversive of discipline.

The action of *Saurin* against *Starr* was one of the most remarkable cases in which he was engaged. It was an action brought by an Irish lady who had joined the branch established at Hull of the religious order known as the Sisters of Mercy. The Superior had, in fact, complained to the ecclesiastical authorities and compelled the lady to leave the convent; and, thereupon, she brought an action in respect of the expulsion and for libel. The case excited great interest at the time—great interest naturally among the Catholic community, and still more amongst the non-Catholic community. It is not, I think, uncharitable to say, as to the latter, that it was anticipated, if not hoped, that the inquiry might throw a lurid light upon the incidents of conventual life. In this respect, the disappointment was great. The incidents of the case were devoid of sensation, and, in any other connection, would have been devoid of interest. No grave moral imputation was made against the plaintiff, and no serious misconduct was, on her part, alleged against the community of which she had been a member. Her case was that, without cause, she had been expelled, and that, without justification, her conduct had been represented as incompatible with conventual life. The case for the convent may be summed up in a sentence: That Miss Saurin had no vocation, that she was incapable of submitting to the strict discipline found necessary in religious communities, that she broke bounds, spoke when she ought to have been silent, and did not observe the small rules of conventual life ordained by those in authority. The charac-

ter of the evidence may be illustrated by an amusing incident which occurred in the course of the cross-examination by Mr. Coleridge of Mrs. Kennedy, a lady who held the office of Mistress of Novices. Mrs. Kennedy mentioned among other peccadilloes that on one occasion she had found Miss Saurin in the pantry eating strawberries when she ought to have been attending to a class of poor children, or some such duty. The cross-examination proceeded thus :

Mr. Coleridge : " Eating strawberries, really ! "

Mrs. Kennedy : " Yes, sir ; she was eating strawberries. "

Mr. Coleridge : " How shocking ! "

Mrs. Kennedy : " It was forbidden, sir. "

Mr. Coleridge : " And did you, Mrs. Kennedy, really consider there was any harm in that ? "

Mrs. Kennedy : " No, sir, not in itself, any more than there was any harm in eating an apple ; but you know, sir, the mischief that came from that. "

In the course of his reply, Mr. Coleridge was severe upon the ladies of the community for the serious view they took of the most trivial things, and, while admitting the good work that they accomplished, attacked them with bitterness in relation to their conduct towards the plaintiff. It was an impressive and powerful speech. One flash in it can recall. " Gentlemen, " he said, " I cannot help thinking that people who devote themselves to that life imitate too exclusively one part of the life of our Divine Lord, and forget the other,—they remember and imitate the forty days in the Wilderness and the lonely hours in the garden and on the mountain, and they fail to bear in mind the marriage of Cana and the Feast of Bethany. " He obtained a verdict for his client, but questions of law of a serious kind were ultimately raised. A rule for setting aside the verdict was obtained, and the litigation was then dropped.

I cannot forbear mentioning in connection with this case a distinguished contemporary, at the Bar, of Mr. Coleridge, who led against him in this litigation ; I mean Mr. George Mellish, afterwards Lord Justice Mellish. No two men could be more dissimilar. Mr. Mellish was of small stature and weak physique. He was an almost constant sufferer from gout. He was a great lawyer, and without any exception the most lucid arguer *in banc* I have ever heard. A case like the Convent Case was quite out of his ordinary line ; but he threw himself into it with the greatest zeal, and, although suffering acutely from an attack of gout

and requiring each morning and evening to be treated by his doctor to enable him to be present in court, he stayed manfully at his post, and delivered for the community one of the finest *nisi prius* speeches I ever listened to.

Sir Alexander Cockburn tried the case, and it afforded a strong illustration of a peculiarity in that remarkable man which those who practised before him will recognize. He began by being breast high with the plaintiff, and so continued during the earlier stages of the trial; but, as the case progressed, and especially after Mr. Mellish's opening speech, he speedily turned round, and did all he could to secure a verdict for the defendants. But it was too late. The case was of a kind not unnaturally to excite prejudice against them, and the minds of the jury could not be turned back from the direction which the earlier action of the Chief Justice had given them.

Mr. Karslake, afterwards Sir John Karslake, was Mr. Coleridge's great rival at the bar; they were great friends as well as great rivals. Both were men of fine presence, Mr. Karslake, however, being the taller. He was once described in a Western Circuit paper as "rising at great length" to reply on the part of the plaintiff, and a story is handed down from the time of Lord Chief Justice Campbell (for the truth of which I do not vouch) in connection with him and Mr. Sam Joyce, who was as remarkably short as Mr. Karslake was remarkably long. It was motion day in the Queen's Bench, and on Mr. Joyce's rising to address the Court, with his head just appearing above the bench in front of the bar, Lord Campbell said:

"Mr. Joyce, when counsel address the Court it is usual for counsel to stand up."

"My Lord," protested Mr. Joyce, "I am standing up."

A little later Mr. Karslake rose from a bench at the back of the court, which sloping upwards gave him even greater apparent altitude than he possessed. Thereupon Lord Campbell is said to have remarked:

"Mr. Karslake, although it is usual for counsel to stand up when they address the Court, it is not necessary for them to stand on the benches."

Although Mr. Coleridge and Mr. Karslake were both distinguished advocates, they were advocates of very different types. The latter was an excellent man of business, possessed of great

mastery over details, and had a strenuous power of persistence which was very effective. Mr. Coleridge possessed the gift of lucid exposition, and had higher qualities as an advocate than Mr. Karslake. He commanded a more beautiful diction, a finer voice, and he was endowed with a power of imagination and of pathos in which his rival was deficient. It used to be said of Mr. Coleridge that he was worst in a losing and best in a winning case when a blaze of fireworks was wanted. I think this does not do him justice. I have known him fight difficult cases strenuously, and winning cases modestly. He was, taken all in all, a remarkable advocate.

Nodoubt the case with which his name will be principally linked is the Tichborne case. His cross-examination of the claimant was at the time the subject of widely divergent opinions at the Bar. For my own part, I thought it, and still think it, the best thing he ever did. It was not a cross-examination calculated, nor should I think even intended, for immediate effect. It was not like the brilliant cross-examination of the witness Baigent by Mr. Hawkins (now Mr. Justice Hawkins), in which the observer could follow the point and object question by question ; but it was one the full force and effect of which could only be appreciated when the facts, as they ultimately appeared in the defendant's case, were finally disclosed. When, indeed, the subsequent prosecution for perjury took place, it was then seen how thorough and searching that cross-examination had been ; how in effect, if I may use a fox-hunting metaphor, all the earths had been effectually stopped. I am glad to find that my opinion of that cross-examination has recently been corroborated by so eminent an authority as the Master of the Rolls, Lord Esher. I must not be understood in what I have said to depreciate his great speech in the Tichborne Case. A more masterly exposition of complicated facts combined with a searching criticism of the claimant's evidence has rarely if ever been delivered. In these great efforts, he was powerfully assisted (as Sir John Coleridge was always ready to acknowledge) by his able juniors, Mr. Mathew (now Mr. Justice Mathew) and the late Lord Bowen (then Mr. Bowen), whose recent death Bench and Bar alike still deplore.

My reference to Mr. Coleridge's parliamentary career will be brief. In 1865 he was returned for the City of Exeter, and in 1868 Mr. Gladstone appointed him Solicitor-General, while in

1871 he succeeded to the office of Attorney-General. He went into Parliament with great prestige ; but, although he won for himself a respected position there and emerged with credit from the severe ordeal of that critical assembly, it cannot, I think, be said that his success or his reputation there equalled his success or his reputation at the Bar. Nor is this remarkable. He had entered the House of Commons comparatively late in life, when he was in his forty-sixth year, and, as a rule, I think it will be found that the men who have achieved great reputations in the House of Commons are men who have entered it young. Moreover, it is difficult for a lawyer in great practice to give that time and close attention and study to political questions without which unqualified success cannot be attained, even by the possessor of considerable natural gifts. Coke said, "Lady Common Law brooketh no bed-fellow"; and so it may be said that to Lady Politics almost exclusive court must be paid. Sir John Coleridge was always better as the maker of a set speech than as a Parliamentary debater. His best House of Commons performance was, I think, his admirable speech in 1866, when he moved the University Test Abolition Bill. I recollect, later, being in the House of Commons when an amusing scene occurred on the occasion of a speech by Sir John Coleridge when in office. He was advocating what are now known as Women's Rights, and he had made a graceful and impressive speech, when, following him in debate, there rose from the same Government bench (it was not a Government question) from which Sir John Coleridge had spoken the burly, mirth-provoking figure of Mr. Dowse, then one of the Law Officers for Ireland. Mr. Dowse set himself to demolish the argument of his learned colleague, and very humorously he made the attempt. The general tenor of Mr. Dowse's reply may be judged from a sentence: "My honorable and learned colleague," said he, "seems to think that, because some judges are old women, all old women are qualified to be judges." On the whole, Sir John Coleridge did not get on that occasion the best of the rally.

Mr. Disraeli is supposed to have spoken of Sir John Coleridge as "silver-tongued mediocrity." This does not do him justice. That he was "silver-tongued" is true ; but that he was mediocre is a judgment which neither his contemporaries nor posterity will indorse. He certainly could not have made the great *Don*



*Pacifico* speech of Sir Alexander Cockburn : but then, who could ?

In 1873 Sir John Coleridge became Chief Justice of the Common Pleas in succession to Sir William Bovill, and he was then created a peer ; and in 1880, on the death of Sir Alexander Cockburn, he became Lord Chief Justice. It is noteworthy that, whereas each of his predecessors had been described in his patent of office as Chief Justice of the King's, or Queen's, Bench, he for the first time was described as " Lord Chief Justice of England."

His judicial career is too recent and too well known to justify me in dwelling upon it at any length. He is undoubtedly entitled to be described as a strong judge ; and when the case was sufficiently important to prompt him to take pains, his judgments showed a broad, masterful grasp of the principles of the law he elucidated. I do not think he possessed the great synthetical and analytical powers of Sir Alexander Cockburn at his best, nor the vigorous common-sense of Sir William Erle, nor the wide, legal erudition of the late Mr. Justice Willes, nor the intimate knowledge of the various branches of commercial law of the late Lord Bramwell, nor the hard-headed logic of Lord Blackburn (I do not refer to eminent judges still on the bench) ; nevertheless he cannot be said to have lacked any quality essential in a great judge. Some of his judgments may well take rank with the best of his time, and many of them are marked by an elegance of diction and possess a literary merit not often met with in judicial records. His judgments in the litigation of the Duke of Norfolk in relation to the Fitzalan Chapel, in the case (commonly known as " the Mignonette Case") of the seamen Dudley and Stephen (charged with murder in having, under stress of hunger, killed and eaten a boy, one of their crew), and in the remarkable commercial case known as the " Mogul Boycotting Case," may be referred to as good examples. His direction to the jury on the trial for blasphemy of Ramsey and Foote in 1883 is regarded as a departure from the law upon that subject as previously laid down by eminent men—a departure, be it added, which has, I think, received the sanction of the profession generally, and a departure in consonance with the freer and more tolerant spirit of the time. That charge, in effect, amounts to this : That it is not a criminal act to attack in decent and considered argument even the fundamental truths of religion as

generally received. Lord Coleridge had great influence with juries, and also treated them with great courtesy and consideration. He made it clear what his own view of a case was, while careful to remind jurors that it was their right and duty to determine disputed questions of fact. Herein he acted upon Bacon's celebrated advice (he was a constant reader of Bacon) to Mr. Justice Hutton : "You should be a light to jurors to open their eyes, but not a guide to lead them by their noses."

In discharge of what may be called the ceremonial duties of his judicial office, it is doubtful whether Lord Coleridge has ever had any superior. His stately and dignified presence, his voice, his easy command of scholarly and dignified speech, all contributed to invest what he said with an interest quite apart from the substance of his utterances.

I have hitherto spoken of Lord Coleridge in his public career at the Bar, in Parliament, and on the Bench. It was in private society that he was most charming, and in which he had probably the largest circle of admirers. As a *raconteur* he was unsurpassed. His mind was stored with anecdotes, infinite in number and in variety, many of them about distinguished men, and many of them about political events ; but while he was an excellent story-teller himself, he was also (and the two qualities are not commonly found together) a most tolerant listener.

I had the honor, in company with the late Lord Hannen, the late Lord Bowen, Sir Horace Davey, Mr. Bryce, M. P., and Mr. Marten, Q. C., formerly Member for Kilkenny, of visiting America with him in 1883. We were invited by the Bar of the State of New York, and most of us were subsequently the guests of Mr. Villard, then the president of the Northern Pacific Railroad Company, on the first through journey by that route across the continent to the Pacific slopes. Lord Coleridge did not accompany us on this part of our travels ; but in several of the New England States he received marks of honor, and all of us enjoyed the proverbially generous hospitality of the great American people. This visit added a large number to his budget of anecdotes which he used to tell with much enjoyment, although now and then some of them told against himself. Desirous of information, Lord Coleridge was inquiring from Mr. Evarts, the distinguished New York barrister, formerly Secretary of State, how American lawyers were remunerated for their work.

Lord Coleridge : " Pray, Mr. Evarts, how do clients pay their lawyers with you ? "

Mr. Evarts : " Well, my Lord, they pay a retaining fee ; it may be \$50, or it may be \$5,000, or \$50,000."

Lord Coleridge : " Yes ; and what does that cover ? "

Mr. Evarts : " Oh ! that is simply the retainer. The rest is paid for as the work is done, and according to the work done."

Lord Coleridge : " Yes, Mr. Evarts, and do clients like that ? "

Mr. Evarts : " Not a bit, my Lord, not a bit. They generally say, ' I guess, Mr. Evarts, I should like to know how deep down I shall have to go into my breeches pocket to see this business through.' "

Lord Coleridge : " Yes, what do you say then ? "

Mr. Evarts : " Well, my Lord, I have invented a formula which I have found answer very well. I say : ' Sir, or Madame, as the case may be, I cannot undertake to say how many *judicial* errors I shall be called upon to correct before I obtain for you final justice.' "

Lord Coleridge used to tell with glee an anecdote concerning a dinner given to him in Chicago by a distinguished lawyer, where a collapse of the banquet was threatened owing to the too vigilant attention of the sheriff's officer who held a writ of *fi. fa.* over the host's goods and chattels. However, the threatened danger was averted. On the same occasion, he had stipulated and was assured that there would be no speeches ; but, to his discomfiture, he saw his host retire into a corner with his secretary before dinner was announced to settle the final proofs of a speech which he later delivered with much success at the banquet.

Lord Coleridge was a good deal bothered by that product of the nineteenth century, the interviewer, and on his way to Chicago one of these gentlemen, failing otherwise to draw him out, began to belittle the old country in the matter of lakes and rivers and mountains, and even men. Lord Coleridge bore it all patiently ; finally, the interviewer said : " I am told, my lord, you think a great deal of what you call your great fire of London. Well, I guess that the conflagration we had in the little village of Chicago made your great fire look very small." To which Lord Coleridge blandly responded : " Sir, I have every reason to believe that the great fire of London was quite as great as the people at

that time desired." He had been fêted, and had speechified much, and been much speechified at, during his American visit, but it must be admitted there was a certain monotony in the themes chosen by the orators of the United States. They were the greatness of Great Britain and her children, and the perhaps still greater greatness of America and her children. In his final speech at Philadelphia, Lord Coleridge referred to this, and, while acknowledging, with extreme courtesy and grace, the kindness of his reception, he wound up by saying: "I might, perhaps, in this connection, refer to an amusing speech of our great lexicographer, Dr. Johnson, who, according to that prince of biographers, Boswell, addressed him thus: 'Sir, you have only two topics of conversation, yourself and me, and I am heartily sick of both.'" This was said so gracefully, and with such good humor, that no one thought of being offended, and certainly Lord Coleridge therein thought of offending no one.

Few men in his position are without enemies, and he was no exception to the general rule. For myself, I know him as a kind, considerate, and generous friend, steady in his friendships, and probably constant also in his dislikes. There are many now living who have experienced kindness at his hands and who can recall, as I can, with gratitude, words of encouragement spoken in times of doubt and difficulty. These count for much in the early career of a barrister struggling to emerge from the unknown crowd. No one, however, will gainsay that, by his death, a great figure has passed away. He was intellectually, as he was physically, head and shoulders above the average of his contemporaries. He had a high sense of the dignity of his great office and of its importance. For above twenty years he sat upon the judicial bench, and I believe that during that long period he did honestly strive "to do right to all manner of people after the laws and usages of this realm, without fear or favor, affection or ill-will."

RUSSELL OF KILLOWEN.